IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Bail Appl..No. 5443 of 2007()

CRIME NO.357 OF 2007 OF KUNNIKODE POLICE STATION

: PETITIONERS/ACCUSED

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1. SANTHOSH KUMAR, S/O.N.KUMARAN,
   AGED 31 YEARS, AKHIL NIVAS, KOTTARAKARA,
   MAYIN BAZAR, KOLLAM.

2. VIKRAMAN PILLAI,
   S/O.GOPALAKRISHNA PILLAI,
   AGED 37 YEARS, KALIYAKKAL HOUSE,
   VETTIKAVALA, KOTTARAKARA.

3. VISHNU, S/O.BHASKARAN PILLAI, AGED 27
   YEARS, VISHNU BHAVAN, VEEIKAVALA, KOTTARAKARA.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENTS: STATE

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY DIRECTOR GENERAL OF PROSECUTION SRI.P.G.THAMPI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5443 of 2007

Dated this the 10th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 2, 3 & 5. Altogether there are 13 accused persons.

2. The crime relates to an incident of death by consumption of toddy vended from a toddy shop of which accused 11 and 12 are the de jure joint licencees. Accused No.1 is alleged to be the defacto licencee. He was allegedly running the business actually. The petitioners are admittedly employees of the 1st accused. It is the prosecution's case that the 1st accused, his employees etc. had conspired together in an attempt to aggressively market the toddy vended from their toddy shop. All the customers were offered toddy free of cost. It is alleged that in connection with Onam celebration free toddy was thus issued to the customers of the 1st accused. What was issued was not genuine toddy but was toddy mixed with spirit. It was this operation which led to injury to many and death of 2 persons. The alleged incident took place on 27th and 28th of August, 2007. The toddy was vended from a point near the toddy shop of which accused 11 and 12 are the licencees. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. While it is true that they are employees of the 1st accused, they have absolutely nothing to do with the vending of the toddy by the 1st accused or any other. They have been unnecessarily dragged into the array of accused. They do not deserve to endure the trauma of arrest and detention. In these circumstances, the discretion under Section 438 Cr.P.C may be invoked in their favour and appropriate directions may be issued to save the petitioners of the trauma of arrest and detention.

4. The application is opposed by the learned Director General of Prosecution. The learned Director General of Prosecution submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The learned Director General of Prosecution submits that the materials collected do clearly indicate that the 1st accused and his employees including the petitioners herein were responsible for preparing the noxious contraband liquor issued through the toddy shop which had led to the death of 2 persons and illness to many. The learned Director General of Prosecution submits that under any circumstances there is no justification in the prayer for grant of anticipatory bail to the petitioners. The petitioners have to be

arrested and interrogated. Their arrest will have to be effected, if found necessary. At any rate, there are no reasons to permit them to be armed with an order of anticipatory bail at this stage. They must co-operate with the investigators, submits the learned Director General of Prosecution.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Director General of Prosecution. I am called upon to invoke and exercise the extraordinary equitable discretion under Section 438 Cr.P.C. Such discretion is to be invoked sparingly and in exceptional cases in aid of justice. At any rate, such discretion cannot be invoked as a matter of course. I am satisfied, in the facts and circumstances of this case that there is merit in the opposition by the learned Director General of Prosecution. The petitioners must co-operate with the investigators. They must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case,

the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-